IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6263 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NALINBHAI @ CHHAGANBHAI BHAGABHAI PATEL - Petitioner(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR DHIRENDRA MEHTA for Petitioner(s) : 1,
MR. Dipen Desai, AGP for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 20/04/2006

ORAL JUDGMENT

Rule. Shri Dipen Desai, learned AGP, who appears on advance copy, waives service of Rule on behalf of respondents. With the consent of the learned advocates appearing on behalf of the parties, the matter is taken up for final hearing today.

2. By way of this petition under Article 226/227 of the Constitution of India, the petitioner-purchaser of the property in question, has challenged the legality and validity of the judgment and order dated 30th July 2005/1.8.2005 passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat, in Revision Application No. 132/2003 in partly allowing the said Revision Application and remanding the matter to the Collector, Surat for deciding the proceedings (RTS proceedings) afresh and to consider whether by transaction in favour of the petitioner there will be breach of provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, or not.

3. It appears from the record that, the petitioner has purchased the lands in question by registered Sale Deed and necessary Entries were mutated in the Revenue records. The Entries in the Revenue record came to be taken under suo motu revision by the Collector, Surat on the ground that by the transaction in favour of the petitioner there will be breach of the provisions of the Bombay

Prevention of Fragmentation and Consolidation of Holdings Act [“the Fragmentation Act” for short]. The Collector, Surat, by judgment and order dated 29.7.2003 set aside the Revenue Entries in favour of the petitioner. Being aggrieved and dissatisfied with the order passed by the Collector, Surat, dated 20th September 2003, the petitioner preferred Revision Application No. 132/2003 before the Principal Secretary (Appeals), Revenue Department, State of Gujarat. Number of submissions were made on behalf of the petitioner and decisions of this Court in the case of ***Evergreen Apartment Co-op Housing Society Vs. Special Secretary, Revenue Department, Gujarat State,*** reported in *1991(1) GLR 113* and in the case of J***anardhan D. Patel Vs. State of Gujarat,*** reported in *1997 (1) GLR 50* were relied upon to emphasize that a Revenue authority while exercising RTS jurisdiction has no authority to set aside an Entry on the ground that the transaction would be in breach of provision of any other law. The Principal Secretary [Appeals], though by impugned judgment and order dated 30th July 2005/1.8.2005 set aside the order passed by the Collector, Surat dated 29.7.2003,

he remanded the matter to the Collector, Surat for deciding whether there will be breach of provisions of Fragmentation Act or not and for other enquiries. Being aggrieved and dissatisfied with the order passed by the Principal Secretary (Appeals), Revenue Department dated 30th July 2005/1.8.2005 in Revision Application No. 132 of 2003, the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

4. Shri Dhirendra Mehta, learned advocate appearing on behalf of the petitioner has vehemently submitted that petitioner purchased the land in question by registered Sale Deed and that while exercising RTS proceedings the authority has no jurisdiction to consider the breach of any other law. Relying upon the aforesaid decisions of this Court in the case of *Evergreen Apartment Co-op Housing Society Vs. Special Secretary, Revenue Department, Gujarat State, (supra)*; in the case of *Janardhan D. Patel Vs. State of Gujarat, (supra)*; in the case of ***Ganeshbhai Manilal Mayavanshi Vs. State of Gujarat & Others, reported in 2005(9) G.H.J. Page 634;*** as well as in

the case of ***Gandabhai Dalpatbhai Patel Vs. State of Gujarat,*** reported in *2004 (7) G.H.J. Page 201*, he has submitted that on the basis of the registered Sale Deed the authorities are bound to make necessary entry in the Revenue record giving effect to the registered sale deed. However, if the authority is of the opinion that the transaction is in breach of any other provision of law then by making necessary entry he can refer the dispute to the appropriate authority. However, the authority is required to make necessary entry. It is therefore submitted that the direction issued by the Principal Secretary (Appeals) while remanding the matter to the Collector, Surat and while quashing and setting aside the order passed by the Collector, Surat, dated 29.7.2003 was not warranted and the Principal Secretary ought to have directed continuance of the Entry which was in favour of the petitioner.

5. Shri Desai, learned AGP, while supporting the judgment and order passed by the revisional authority, has submitted that as it is a case of remand by the revisional authority to the Collector,

Surat the same is not required to be interfered with by this Court in exercise of power under Article 226/227 of the Constitution of India and therefore he has requested to dismiss the present Special Civil Application.

6. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the petitioner has purchased the land in question by registered sale deed. The Entry was mutated in the Revenue record on the basis of the sale deed as aforesaid and that the said Entry came to be taken under suo motu revision by the Collector, Surat by alleging inter alia that by transaction in favour of the petitioner there will be breach of provisions of the Fragmentation Act. As held by this Court in the case of *Evergreen Apartment Co-op Housing Society Vs. Special Secretary, Revenue Department, Gujarat State, (supra)*; and in the case of *Janardhan D. Patel Vs. State of Gujarat, (supra),* the Revenue authority has no jurisdiction to consider whether there is breach of any other law while deciding RTS proceedings. This Court in the aforesaid two decisions in the case

of **Ganeshbhai Manilal Mayavanshi Vs. State of Gujarat & Others,** and in the case of **Gandabhai Dalpatbhai Patel Vs. State of Gujarat,** (supra) has held that the Revenue Authority is bound to give effect to the registered Sale Deed by making necessary Entry, however if the RTS authority is of the opinion that there is breach of any other law, then he may refer the dispute to the competent authority and at the same time necessary Entry on the basis of registered Sale Deed should be made. Considering the aforesaid decisions and the judgment and order passed by the Principal Secretary (Appeals, Revenue Department, State of Gujarat, directing to hold enquiry as to whether there will be breach of Fragmentation Act while considering the RTS proceedings, is required to be quashed and set aside and the same is hereby quashed and set aside and the Entry in favour of the petitioner is hereby restored. However, it is observed that an additional Entry be made in the record of rights that according to the Revenue authority the transaction is in breach of the Fragmentation Act. It is also open for the appropriate authority to initiate proceedings for

breach of the Fragmentation Act and/or any other law, if the authority is of the opinion that by transaction in favour of the petitioner with regard to the land in question there will be breach of the Fragmentation Act and/or any other law, and the same can be decided in accordance with law and on merits keeping all contentions on behalf of the petitioner including the limitation aspect open. It is, however, made clear that by restoration of the Entry in question by this order, it may not be construed that this Court has put a seal on the transaction in question. In view of the above observations, the petition is required to be allowed.

7. For the reasons stated above, the petition succeeds. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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